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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,470	02/07/2001	Cheree L. B. Stevens	ADV12 P300A	4695

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EXAMINER
TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	4

DATE MAILED: 04/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/778,470	Applicant(s) Stevens et al.
	Examiner Lien Tran	Art Unit 1761

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) X Responsive to communication(s) filed on *Feb. 7, 2001*

2a) This action is **FINAL**. 2b) X This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) X Claim(s) *1-48* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) X Claim(s) *1-48* is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1)	Notice of References Cited (PTO-892)	4)	Interview Summary (PTO-413) Paper No.s
2)	Notice of Draftsperson's Patent Drawing Review (PTO-948)	5)	Notice of Informal Patent Application (PTO-152)
3) X	Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3	6)	Other:

1. Claims 3,33 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is vague and indefinite. It is not clear if the rice component includes all the flours listed or one. While line 1 recites " at least one", line 2 does not list alternative and seems to indicate all the flours. Also, what does applicant mean by " derivatives of said rice flour"? What would be considered as derivatives of rice flour?

In claim 33, the term " derivatives thereof" has the same problem as in claim 3.

In claim 48, the way the claim is written, the solids content seems to refer to the potato substrate which is not accurate.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in-
> (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
> (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1,2,4,5,8,9-11, 13-17, 20, 21, 23, 27, 29-31, 34-36, and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by Higgins et al (5976607).

Higgins et al disclose a water dispersible coating composition for fat-fried foods. The composition comprises 45-90% corn starches, 5-20% rice flour, 1-15% dextrin, .05-4.5% stabilizing agent, .5-2% leavening agent. Where a less crunchy texture is desired, modified starch is used in an amount of 15-60%, rice flour in 8-25% and dextrin is 0-15%; the rest of the ingredients are the same as above. The dextrin is tapioca dextrin or potato dextrin, the stabilizer is xanthan gum and the leavening agents are sodium acid pyrophosphate and sodium bicarbonate. The composition may also have other flavoring agents such as salt, spices. The composition may be used as a slurry. The food substrates are coated with the coating composition and then fried. The food may be parfried and then frozen for subsequent reheating. The fried food can be placed under heating lamp to evaluate heat-lamp stability. (See columns 6-8)

The reference discloses all the limitations of the above cited claimed. The amounts and ratio of rice flour and dextrin fall within the ranges claimed.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 3,6-7,12,18-19,22,24,25,26,28,32,33,37,38-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins et al in view of Rogols et al.

The teaching of Higgins et al are described above. They do not disclose the limitations in the above cited claimed.

Rogols et al disclose a coating composition for food substrates containing rice flour and dextrin. They teach suitable rice flours to use include long grain, medium grain and waxy rice. Long grain rice provides the best results for crispness and use of medium grain rice flour tends to give a tough bite. (See col. 5 lines 15-20)

It would have been obvious to one skilled in the to select the type of rice flour depending on the texture wanted as Rogols et al show different rice flour gives different texture to the finished food products. As to the solubility of the dextrin, it would have been obvious to choose the solubility depending on the type of coating mix. For example, if a batter is made, it would have been obvious to choose high solubility dextrin so that it can dissolve quickly or if a dry mix is made, it would have been obvious to choose low solubility dextrin so that it is not affected easily by moisture. It would also have been to choose low amylose or high amylose starch depending on the texture wanted. It would also have been obvious to add sugar, salt and coloring

to the coating composition to enhance the taste and appearance; the amount to be added depends on the taste and appearance desired. It would have been obvious to one skilled in the amount to determine the amount of water to form a slurry which would give the most optimum coating; this can readily be determined through routine experimentation. It would have been obvious to apply the coating mix as a slurry or a dry mix depending on the thickness of the coating wanted. a slurry will give a thicker coating than a dry mix. When a dry mix is applied to the food substrate, it would have been obvious to moisten the food so that the dry mix can more easily adhere to the substrate. It would have been obvious to parfry or not parfry the food substrate depending on degree of cook desired. a parfried food will take shorter time to reheat than a non-parfried food. It would have been obvious to hold the coated food for any amount of time depending on the time of consumption. It would have been obvious to hold the food at ambient temperature if it is desired for the food not to be hot. It would also have been obvious to use any known stabilizer and methylcellulose is well known in the art to be used as stabilizer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

April 4, 2003

Tran

Group 1762